

### REMARKS

This communication is in response to the Final Office Action mailed on November 24, 2008. Claims 1-11, 13-22, and 24-39 were pending in the application, and the Examiner rejected all claims. A response to the Final Office Action was filed with the Office on January 12, 2009, but was not entered. With this communication, claims 1, 3-4, 22, 24-25, 28, and 36 are amended and claims 2 and 26-27 are canceled. All of the other claims remain unchanged in the application.

#### **Telephonic Interview**

On January 6, 2009, a telephonic interview was conducted between the Examiner and the undersigned attorney, with Kenneth Brandt from our office sitting in on the interview. During the course of the interview, the outstanding rejections and cited in the November 24, 2008 Final Office Action and proposed claim amendments to address the rejections were discussed. No agreement was reached, but the undersigned attorney thanks the Examiner for the courtesy of allowing the interview.

#### **Objections to the Specification**

The specification is objected to under 35 U.S.C. § 132(a) as allegedly containing new matter introduced in the last Amendment, filed on June 30, 2008. More particularly, the Office Action objects to the use of the “motorized” in the claims. Applicants respectfully disagree with the objection, but have amended claims 22, 24-25, and 28 to address the objection. Withdrawal of the objection is respectfully requested.

#### **Claim Rejections – 35 U.S.C. § 112**

Claims 1, 22, 24-25 and 28 stand rejected under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. Specifically, the Office

Action asserts that the specification does not support the recited feature of a “motorized” product.

Applicants respectfully traverse the rejection with respect to claim 1. The reason provided for the rejection is the use of the word “motorized”. However, claim 1 does not include the word “motorized” and applicants respectfully submit that the application is otherwise in compliance with the written description requirement as it pertains to claim 1.

With respect to claims 22, 24-25, and 28, Applicants again respectfully disagree with the rejection. Nevertheless, Applicants have amended claims 22, 24-25, and 28 to remove the word “motorized”. In view of these amendments, Applicants respectfully submit that the specification does comply with the written description requirement as it relates to claims 22, 24-25, and 28. Withdrawal of the rejection is respectfully requested.

Claim 36 stands rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Claim 36 has been amended as suggested by the Office Action. Withdrawal of the rejection is respectfully requested.

**Claim Rejections – 35 U.S.C. § 103**

Claims 1-11, 13-21, 24, 26-39 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Number 6,837,436 of Swartz et al. (hereinafter “Swartz”). Of these claims, claim 1 is an independent claim. Claim 1 has been amended to include, among other things, the subject matter of claim 2, which is now canceled.

Claim 1 reads as follows:

A method of filling an order using a product moving device that engages and supports a pallet in a store, comprising:

receiving a list transmitted to a first device coupled to the pallet, including at least one item, representative of the order;

transmitting the list from the first device to a second device on the product moving device;

displaying the list to an operator on a display device on the product moving device;

placing an item on the list on the pallet;

detecting an item placed on the pallet by receiving a signal from a tag on the item and identifying the item based on the received signal;

reflecting detection of the item on the list displayed on the display device;  
and

electronically displaying, at the product moving device, a route within the store for the operator to travel with the product moving device to obtain all remaining items on the list.

(Emphasis Added.) Applicants respectfully submit that Swartz fails to teach or suggest all of the features recited in claim 1, especially, but not necessarily exclusively, those emphasized above. As a preliminary matter, Applicants once again point out that the Swartz reference has Figures that appear to be totally unrelated to the specification. Therefore, Applicants have attempted to understand the meaning of Swartz without the benefit of drawings. As best the Applicants can understand the Swartz reference, there appears to be no teaching or suggestion of a method that includes “receiving a list transmitted to a device coupled to the pallet, including at least one item, representative of the order” and “transmitting the list from the first device to a second device on the product moving device”.

The invention recited in claim 1 is directed toward a method that includes receiving a list at a device coupled to a pallet. The list includes at least one item that represents an order. By effectively associating the list with a first device on a pallet, a master computer system can determine what pallet in a store is best suited for a specific order and then assign the list to the pallet (see Application p. 30). The list is then transmitted from the first device to a second device on the product moving device. An item placed on the pallet is then detected and the list then reflects the detection of the item. The method recited in claim 1 thus advantageously provides a method for retrieving items in a store by assigning an order to a pallet. In situations where choosing a particular pallet is an important consideration in optimally filling an order, the

present invention is suited to choose a pallet by transmitting a list to it. Because having a display collocated with the device coupled to the pallet may not always be advantageous, the invention in claim 1 recites that the list is displayed on a display device that is remote from the device that is coupled to the pallet. In other words, the display device is remotely located from the device on the pallet. In addition, the list is transmitted to a device on the product moving device so that both the pallet and the product moving device have the list.

The Swartz reference does not appear to teach or suggest a method for receiving a list transmitted to a first device coupled to a pallet and transmitting the list to a second device coupled on the product moving device. Furthermore, Swartz does not appear to teach displaying the list to an operator on a display device remotely located from the device on the pallet. Swartz does appear to teach a portable terminal that is capable of receiving a list, but does not appear to teach or suggest that a list is transmitted to a second device on a product moving device. Swartz is not directed toward a method that employs a pallet that receives a list and transmits it to a product moving device that is engaged with it and therefore does not teach or suggest the recited features detailed above. For at least these reasons, Applicants respectfully submit that claim 1 is allowable over the cited reference.

Claims 2-11 and 13-21 depend from claim 1 and are believed to be allowable at least on the basis of their dependence on an allowable base claim. Claims 26-27 have been canceled by this response, rendering their rejection moot. Claims 24 and 28-39 depend from independent claim 22, which is not rejected as being unpatentable over Swartz alone. Therefore, Applicants submit that claims 24 and 28-39 are also allowable over Swartz. Applicants point that independent claim 22 is believed to be allowable over all cited references as discussed in more detail below. Withdrawal of the rejection is respectfully requested.

Claims 22 and 25 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Swartz in view of U.S. Patent Number 7,020,494 of Spriestersbach et al (hereinafter "Spriestersbach"). Claim 22 is an independent claim. Claim 22 has been amended

to include the subject matter of claims 26 and 27, now canceled. As amended, claim 22 reads as follows:

An order filling system comprising:

- a first computer system;
- a picklist containing a list of desired items to fill an order;
- a motorized product moving machine having a first reader disposed thereon, connected to the first computer system;
- a pallet having an identification tag, readable by the first reader on the motorized product moving machine, the identification tag storing a pallet identification in a form readable by the reader and data related to the order including the picklist, the pallet identification being associated with the order in the first computer system and wherein the identification tag is configured to read data from an item tag disposed on each of the items that is placed on the pallet;
- a display device connected to the motorized product moving machine configured to display the picklist; and
- wherein the picklist is generated at the first computer system and transmitted to the first reader on the motorized product moving machine.

(Emphasis added.) Applicants respectfully submit that claim 22 is allowable over the cited references for at least the reasons discussed below.

Claim 22 recites a pallet having an identification tag that is readable by the first reader. The identification tag stores not only a pallet identification, but also data related to the order, specifically including the picklist. The Office Action rejects the subject matter of dependent claim 26 for the same reasons provided by claim 1. However, there is no assertion in the Office Action that the combination of Swartz and Spriestersbach teaches or suggests a pallet with an identification tag that stores data related to the order. Swartz appears to be primarily concerned with generating a list and Spriestersbach appears to teach identifying pallets, but neither provides any teaching or suggestion of an order filling system that has an identification tag on a pallet with information related to a picklist. Furthermore, neither reference provides any teaching or suggestion of an identification tag on a pallet, or anywhere else that is configured to read data from an item tag disposed on an item, much less items placed on a pallet. Thus, Applicants submit that claim 22 is allowable over the cited references. Furthermore, claim 25 is believed to be allowable based at least on its dependence on claim 22.

It is noted above that claims 24 and 26-39 depend from claim 22. As Applicants submit that claim 22 is allowable over the cited references, as discussed above, Applicants also respectfully submit that claims 24 and 26-39 are allowable based at least on their dependence on claim 22. Withdrawal of the rejection is respectfully requested.

Summary

Claims 1, 3-11, 13-22, 24-25, and 28-39 are pending. In view of the claim amendments and remarks above, Applicants respectfully submit that all of the pending claims are in condition for allowance. Entry of this Amendment, reconsideration, and Allowance are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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